Central Law Journal.

ST. LOUIS, MO., SEPTEMBER 27, 1901

The assassination of President McKinley has forced upon the consideration of the country questions of the most serious import—questions which have arisen heretofore, but have been permitted to smolder and to remain unanswered.

The act which resulted in the death of the President is, of course, murder and punishable by death, but the motives which prompted the assassin are important. It was a blow directed, not against Mr. McKinley, but against the President of the United States; it was prompted not by anger or spite against the man, but a deep seated prejudice against the office and the authority it represented. It was executed, not out of hope of any mere personal advantage, but under a settled conviction that the success of certain principles of government, called "anarchy," were necessary to release the world from an imagined tyranny, and that the death of those high in authority were the legitimate and nearest means of its attainment. The assassin, therefore, in this case, as in every such case, poses as a martyr to principle, and the death penalty does not call him to repentance. Herein lies the exceeding seriousness of this question. These principles have other votaries, and a propaganda which seeks to obtain the same awful and controlling influence over others. What is the remedy.

The criminal liability of those who directly incite others to deeds of violence or combine with them to overthrow the government is one of the first questions which suggest themselves, and was clearly decided in the cases which arose out of the anarchist uprising in Chicago in 1886, known as the Haymarket Cases. In one of these cases the editor of the *Arbeiter Zeitung*, who had incited the anarchists to violence together with a number of their leaders were convicted of murder and executed. Chief Justice Magruder, of the Supreme Court of Illinois, in passing upon the case, declared the law to be as follows: "If men combine together as conspirators to accomplish an unlawful purpose, as the overthrow of society and government and law, called by them a 'social revolution,' and seek, as a means to an end, to print and speak, in order to incite others to tumult and riot and murder, those who advise or instigate the others to violence will be held responsible for the murder that may result from their aid and encouragement." Spies v. People, 122 Ill. 1. Further on, in speaking of the liability of editors and orators who spread the pernicious doctrine of anarchy, the court advances this bold statement of the law so appropriate to the present crisis and its lessons: "He who inflames people's minds and induces them by violent means to accomplish an illegal object, is himself a rioter, though he takes no part in the riot. If he wakes into action an indiscriminate power, he is responsible. If he gives directions vaguely and incautiously, and the person receiving them acts according to what he might have foreseen would be the understanding, he is responsible. It can make no difference whether the mind is affected by inflammatory words addressed to the reader through the newspaper organ of a society to which he belongs, or to the hearer through the spoken words of an orator whom he looks up to as a representative of his own peculiar class." This rule does not deny the right of free speech or of the liberty of the press, but holds both the orator and the editor liable for the results which flow from the expression of his sentiments.

The proper limitations on the liberty of the press and their criminal responsibility for creating a feeling of discontent among the unthinking masses, and of disrespect for law and authority, or for instigating to crime and immorality, is a very difficult problem and one which has never been definitely or satisfactorily determined. The late case of *Re* Banks, 56 Kan. 242, goes very far in applying a remedy. In that case a statute of Kansas providing for punishment for publishing a newspaper devoted largely to the publication of scandals and accounts of lecherous and immoral conduct was held not in violation of the constitutional right of all persons freely to "speak, write, or publish their sentiments on all subjects, being responsible for the abuse of such right." The court said: "We entertain no doubt that the legislature has power to sup-

press this class of publications without in any manner violating the constitutional liberties of the press." Most authorities, however, are not willing as yet to go to the extent of this case, and deny the right of the legislature to prohibit the publication of a newspaper for any reason, holding that the only proper remedy is against the newspaper and its publisher, either criminally or civilly, for any abuse of his privileges. *Ex parte* Neill, 32 Tex Cr. Rep. 275.

Where a newspaper, however, attempts to ridicule and abuse the judiciary they are treading on very dangerous ground. A most commendable and wholesome tendency is to be observed of late years on the part of courts all over the country to hold newspapers to a strict accountability for all publications derogatory of the court or its decisions. The rule in this regard was well stated by the court in the case of State v. Morrill, 16 Ark. 388, as follows: "Any citizen has the right to publish the proceedings and decisions of a court, and if he deems it necessary for the public good, to comment upon them freely, and discuss the fitness or unfitness of the judges for their stations, but he has no right to attempt by defamatory publications to degrade the tribunal, destroy public confidence in it, and dispose the community to disregard and set at naught its orders, judgments and decrees. Such publications are an abuse of the liberty of the press, and tend to sap the very foundation of good order and well-being in society. The liberty of the press is one thing, and licentious scandal is another."

NOTES OF IMPORTANT DECISIONS.

CRIMINAL LAW—OBTAINING MONEY UNDER FALSE PRETENSES—RELIGIOUS INFLUENCE.—A case has recently risen in which the facts, while quite unique, are not unlikely to arise more often in the future. We refer to the recent case of Dowd v. Dowd (Mich.), 86 N. W. Rep. 86. The question of law was whether the honesty of their belief in certain religious teachings by which they obtained money had any effect on a charge against them for obtaining money under false pretenses. The defendants represented to a Mr. Curtis that they were the apostles of Christ; that said Curtis and they were to be the judges of the people in that part of the country; that the son of Curtis was to be Christ in his second coming; that they (respondents) were sent by the Lord to tell Curtis these things; and that the Lord required of him to pay to them $300, to make a home for them, which he did promptly. The respondents were convicted. The court charged the jury in very clear language, that if they believed defendants to be honest in their religious belief, no matter how misguided they might believe them to be, they could not be convicted. The supreme court, on appeal, held the charge to the jury to be a most correct one, and further that the jury are the sole judges of the sincerity of defendant's belief in such cases.

In view of the fact that certain leaders and promulgators of strange religious teachings have been alleged to have grown extremely wealthy under the successful growth of their new propaganda, it is very possible that cases of a similar nature will arise. The difficulty in handling such cases is to find the line between a proper regard for the freedom of conscience and religious belief on the one hand and the protection of the weak-minded and those easily influenced, from the schemes of religious tricksters. Even a jury of twelve sensible men will find it hard sometimes to carefully distinguish between religious trickery on the one hand and sincere belief on the other, but, undoubtedly, they are the most competent judges of that question.

MORTGAGES—RIGHT OF MORTGAGEE TO FORECLOSE AFTER DEATH OF MORTGAGOR.—What acts of the mortgagee will operate to release or discharge the lien of a mortgage has always been a litigated question of law. One phase of this question arose in the recent case of National Fire Insurance Co. v. Fitzgerald (Neb.), 85 N. W. Rep. 948, where it was held that a mortgagee may, after the death of the mortgagor, institute a suit to foreclose his mortgage, and the mere filing in the county court of the mortgage debt as a claim against the decedent's estate while the foreclosure suit is pending will not operate as a release or a discharge of the mortgage. Reviewing the authorities the court said in part: "Considering together the various provisions of chapter 23, *supra*, it is quite apparent that the right of a mortgagee to foreclose his mortgage is not affected in any way by the death of the mortgagor; and it is equally clear that the legislature did not intend that the filing in the county court of a claim secured by a mortgage or other lien on the debtor's property should work a forfeiture of the security. The following authorities bear upon the question, and tend directly or inferentially to sustain the conclusion we have reached: Meehan v. Bank, 44 Neb. 213, 62 N. W. Rep. 490; State v. Nebraska Sav. Bank, 40 Neb. 342, 58 N. W. Rep. 976; Andrews v. Morse, 51 Kan. 30; Kohl v. Hall, 141 Ind. 411, 40 N. E. Rep. 1060; Simms v. Richardson, 32 Ark. 297; Jones, Mortg. § 1218; 5 Am. & Eng. Enc. Law (1st Ed.), 213; 8 Am. & Eng. Enc. Law (2d Ed.), 1069. The authorities cited by counsel for appellants (Libby v. Cushman, 29 Me. 429; Whitney v. Farrar, 51 Me. 418; Evans v. Warren, 122 Mass. 303; Buck v. Ingersoll, 11 Metc. (Mass.) 226, to the effect

that a mortgagee may waive his lien, and will, under some circumstances, be held to have waived it, by his conduct, are not, we think, applicable to the facts of this case. The plaintiff did not actually intend to abandon his lien, and he has done no act which is inconsistent with the existence of the right to enforce it. His position is as logical now as it would have been had he brought a foreclosure suit against Fitzgerald in his lifetime, and afterwards sued him to recover a personal judgment on the mortgaged debt."

RAILROADS—ACTION FOR KILLING DOG.—An interesting case was recently decided by the Supreme Court of Alabama, in the case of Louisville & Nashville Ry. Co. v. Fitzpatrick, 29 South. Rep. 859, where it was held that a dog is a species of property for the injury of which an action at law may be maintained; and that the owner of a dog can maintain an action against a railroad company to recover damages for the negligent killing of such dog. The court gives the following explanation of the position: "By the common law ownership of a dog carried with it property rights sufficient to afford the owner a civil remedy for injuries to the animal, but which was not a subject of larceny. 4 Bl. Comm. 235. This court has followed the common-law doctrine entire as to action for damages in Parker v. Mise, 27 Ala. 480, and White v. Brantley, 37 Ala. 430, and representing larceny in Ward v. State, 48 Ala. 163, and Johnson v. State, 100 Ala. 32, 14 South. Rep. 629. In other jurisdictions the civil remedy has been generally accorded, but to justify the proposition that a dog cannot be stolen has been difficult to an extent which has produced much conflict in decisions on that subject. See note to Hamby v. Samson (Iowa), 67 Am. St. Rep. 285, 74 N. W. Rep. 918, 40 L. R. A. 508, which collates and reviews authorities. Still more difficulty is invited by the theory of appellee's demurrer and argument going upon the assumption that a dog, though property, when willfully injured has no such attribute as will merit the exercise of care to avoid his injury. That theory seems to be favored by the opinion in Jamison v. Railroad Co., 75 Ga. 444, 58 Am. Rep. 476; but it was not necessary to the decision there made. In that opinion Wilson v. Railroad Co., 10 Rich. 52, is cited as authority, but the latter decision, as is shown in Salley v. Railroad Co., 54 S. Car. 481, 32 S. E. Rep. 526, 71 Am. St. Rep. 810, turned on the construction of a statute relating to the burden of proof on the question of negligence. In Salley's case, *supra*, the decision was on a demurrer to a complaint claiming damages for alleged negligence of a railroad company in running over and killing a dog, and is, therefore, directly in point here. It upheld the cause of action as a conclusion resulting from what had been held on kindred questions in many adjudications referred to in the opinion. To the same effect are Railway Co. v. Hanks, 78 Tex. 301, 14 S. W. Rep. 691; Transit Co. v. Dew, 100 Tenn. 317, 45 S. W. Rep. 790, 66 Am. St. Rep. 754; Jones v. Railroad Co., 7 Miss. 970, 23 South. Rep. 358."

RAILROADS—LIABILITY FOR NOT RINGING BELLS.—A question often arising and on which the courts are still in dispute is the liability of railroads for injuries at crossings where the statutory signals were not given. This question arose recently in the case of Mankey v. Railway Co. (South Dak.), 85 N. W. Rep. 1013. In that case a statute provided that whenever a railroad train approaches any crossing a bell shall be rung or a whistle blown, and that, in case of neglect, the railroad shall be liable for damages sustained by any person by reason of that neglect. Held, that where a horse was injured by being run into by a train between a whistling post and a crossing, and no statutory signals were given, there could be no recovery for the injury, in the absence of evidence that such failure was the cause of the injury. In construing the statute just referred to, the court said in part:

"The decisions of the courts under similar statutes are not in entire harmony, and no usefu purpose would be served by an attempt to review them; but the general rule laid down seems to be that unless the failure to comply with the statute in some manner contributes to the injury complained of, the company is not liable. In other words, there must be some connection between the failure to comply with the statute and the injury, and this, like any other fact in the case, must be proven by evidence, or, at least, there must be evidence from which the jury may reasonably draw the inference that the neglect of duty was the cause of the injury. Railway Co. v. Stebbing, 62 Md. 504; Hayes v. Railroad Co., 111 U. S. 228, 4 Sup. Ct. Rep. 369, 28 L. Ed. 410; Railway Co. v. Blackman, 63 Ill. 117; Railway Co. v. McDaniels, 63 Ill. 122; Pike v. Railroad Co. (C. C.), 39 Fed. Rep. 754; Bell v. Railway Co. 72 Mo. 58; Evans v. Railroad Co., 62 Mo. 57; Railway Co. v. Taylor, 104 Pa. 306; Holman v. Railroad Co., 62 Mo. 562; Wallace v. Railway Co., 74 Mo. 594; Railway Co. v. Pierce, 33 Kan. 61, 5 Pac. Rep. 378; Reynolds v. Railway Co., 16 C. C. A. 435, 69 Fed. Rep. 808, 29 L. R. A. 695; Blankenship v. Railway Co., 15 Tex. Civ. App. 82, 38 S. W. Rep. 216; Railway Co. v. Parker (Tex. Civ. App.), 37 S. W. Rep. 973, 46 S. W. Rep. 289; Railroad Co. v. Burke, 93 Ga. 319, 20 S. E. Rep. 318. In Wallace v. Railway Co., *supra*, the Supreme Court of Missouri, speaking upon the subject, says: 'Neither does the failure to ring the bell or sound the whistle constitute negligence *per se;* there must appear to be some necessary connection betion between the failure and the injury.' In Holman v. Railroad Co., *supra*, it appears from the opinion that the plaintiff, to maintain the issues on his part, introduced evidence tending to show that the bell was not rung nor the whistle sounded, and the court says: 'The damage must

be shown to be the result of the negligence; that is, the negligence must first be shown, and this fact must be supplemented by testimony tending to show that the negligence occasioned the damage.'"

CORPORATIONS — CANCELLATION OF STOCK SUBSCRIPTION—RIGHTS OF RECEIVER.—An interesting case of the right of a receiver of a corporation to bring suit on subscription for stock which had been cancelled by the corporation was that of Lellyett v. Brooks (Tenn.), 62 S. W. Rep. 596, where it was held that where a corporation permits the cancellation of a stock subscription, it and its assignee in insolvency are estopped to sue thereon; creditors existent at the time, and still unpaid, being the only ones who can sue on such subscriptions.

This decision is in line with the authorities. Thus, in the case of Glenn v. Hatchett, 91 Ala. 316, it was held that a resolution adopted by a corporation—that is, by the stockholders directly, or ratified by them after its adoption by the board of directors—authorizing the surrender and cancellation of one-half of the number of shares subscribed for, so that 5 per cent. paid on the whole number shall be considered as ten per cent. paid on the half retained, is valid and binding as between the corporation and the stockholders who avail themselves of it; and it is equally binding on a trustee appointed in a deed of assignment for the benefit of creditors, executed by the corporation on its subsequent insolvency, or a trustee appointed in his stead by a court of equity; but creditors may, it seems, set aside such surrender and cancellation as a fraud on their rights. The case of Insurance Co. v. Swigert, 135 Ill. 150, 25 N. E. Rep. 680, 12 L. R. A. 328, is equally in point. In that case it appeared that proceedings were instituted by a receiver whose powers were the same as those of an assignee under a voluntary assignment, and that the question was whether such receiver could sue and recover amounts on subscriptions to stock which had been previously cancelled by the company. Said the court: "A corporation may, if it acts in good faith, buy and sell shares of its own stock. Railroad Co. v. Town of Marseilles, 84 Ill. 145, 643; Chetlain v. Insurance Co., 86 Ill. 220; Clapp v. Peterson, 104 Ill. 26. The surrender by stockholders to the company of the certificates of stock upon which 20 per centum had been paid, and the issuance to such stockholders of certificates for paid-up stock, was, in substance and in legal effect, a purchase by the company of the unpaid stock at its par value. The transaction in question was lawful and valid, so far as the company itself was concerned, and was binding upon it, and it had no right to impeach it; only the creditors were entitled to that privilege. And the company had no authority to enforce or to 'control' the claims, and it could not pass by its deed of assignment to any one, either assignee or receiver, any right of control or enforcement that it did not itself have." See, also, Bouton v. Dement, 123 Ill. 142, 14 N. E. Rep. 62; Institution v. Adae (C. C.), 8 Fed. Rep. 106, 109; Clapp v. Nordmeyer (C. C.), 25 Fed. Rep. 71, 73; Manufacturing Co. v. Wright (C. C.), 22 Fed. Rep. 631. See, also, the case of Anderson v. Amonzett, 9 Lea, 1, 13, 14, where it is held that an assignee for creditors does not occupy the *status* of a creditor, but merely that of a volunteer. To the same effect see Trust Co. v. Bank, 91 Tenn. 336, 18 S. W. Rep. 822, 15 L. R. A. 710; Stainbank v. Manufacturing Co., 98 Tenn. 306, 319, 39 S. W. Rep. 530.

JUDGMENT—ASSIGNMENT OF PART OF JUDGMENT.—There has been some dispute whether the assignment of part of a judgment without the debtor's consent is valid against the latter's objection. This question arose in the recent case of Line v. McCall (Mich.), 85 N. W. Rep. 1089. In this case A and L were partners, and as such obtained a judgment against defendants for $6,000. On July 26, 1895, L assigned his interest in the judgment to plaintiff, and notice thereof was served on defendants' attorney. In August, 1895, A settled with defendants, through their attorney, for $1,100, and A executed a release of the judgment in the name of the firm. Held that, as the assignment of a part of the judgment was enforceable in equity, a decree dismissing plaintiff's bill to set aside the satisfaction of the judgment was erroneous. Montgomery, C. J., reviewed the authorities on this point as follows:

"There is no doubt of the fact of the assignment by Le Veque of his interest in the judgment to the complainant Line. It does not appear that any creditor is complaining, and it does appear that Le Veque's co-partner, Alway, assented to this assignment. In what manner, then, the assignment works any injury to the judgment debtor, I am unable to see, unless it be true, as contended, that an assignment of a portion of a judgment is of no effect, either in law or equity, as against the judgment debtor. I do not understand this to be the rule. It is true that it has been held in some jurisdictions that at law an assignment of a portion of a judgis wholly ineffectual. In Missouri it seems to have been held that it is equally ineffectual in equity. See Love v. Fairfield, 13 Mo. 300, 53 Am. Dec. 148, and Burnett v. Crandall, 63 Mo. 410. But elsewhere the rule seems to be firmly established that an assignment of a portion of a claim is good in equity, and creates at least a trust in favor of the equitable assignee, or, as is said by the Supreme Court of Ohio, in Railway Co. v. Volkert, 58 Ohio St. 362, 50 N. E. Rep. 924: 'Whatever term is applied to it (the assignment) by way of description, the result reached is to give to the assignee a property right in the thing assigned—a right which is cognizable and enforceable in a court of equity.' In the case last cited it was distinctly held that, after an assignment of a portion of a demand or judgment, the

debtor, having notice of the assignment, could not discharge the entire demand, so as to cut off the rights of the assignee. See, also, Railroad Co. v. Ackley, 58 Ill. App. 572; Moore v. Robinson, 35 Ark. 293; Beers v. Henderson, 45 N. Y. 665."

It might be well to call attention to some of the latest authorities on this question. In the case of McMurray v. Marsh, 54 Pac. Rep. 852, it was held that a partial assignment of a judgment is binding on the assignor, even when made without the judgment debtor's consent. In the case of Pittsburg, etc. R. R. v. Volkert, 58 Ohio St. 362, 50 N. E. Rep. 924, it was held that a judgment debtor, after knowledge of an equitable assignment of an interest in the judgment, has no power to compromise the debt with the assignor alone, and thus defeat the claim of the assignee. The assignment of an interest in a right of an action for a personal injury which is to be prosecuted in the name of the assignor, with an agreement to assign a corresponding interest in the judgment which might be recovered in the future, is equivalent to an equitable assignment of the specified interest in the judgment the moment it is perfected, and binds all parties having notice or knowledge of the same. North Chicago St. Ry. Co. v. Ackley, 58 Ill. App. 572. In Missouri, as stated by the court, the rule is diferent. The case of Loomis v. Robinson, 76 Mo. 488, lays down the rule emphatically that a part of a judgment cannot be assigned without the debtor's assent, and that such an assignment without consent of debtor is void, both at law and in equity.

ADULTERY—EVIDENCE OF INTIMACY PRIOR AND SUBSEQUENT TO THE OFFENSE CHARGED.—A local paper recently sent to us by a correspondent in Michigan contains a severe editorial arraignment of one of the latest decisions of the supreme court of that state in which, it is asserted, the court has directly contradicted itself on a question of law of more than usual importance. The editorial criticism referred to is as follows:

"Is it any wonder that a lawyer's hair grows prematurely gray practicing law in Michigan, while glaring inconsistencies are so common among the decisions rendered by the supreme court? To illustrate our point we will refer to two quite recent opinions filed in cases in which the subject-matter was the same, and the precise question in each was: What familiarity is admissible in evidence to corroborate a charge of adultery? The first case is that of The People v. Fowler, 104 Mich. 453, decided March 19, 1895. The defendant had been convicted of adultery, and in setting aside the conviction the court, in an opinion by Justice Long, said: 'Testimony was admitted to show a similar offense on May 6th, 1892. This was some three months after the offense charged in the information. The court was in error in admitting this testimony. Acts of intimacy in this class of cases prior to the offense charged may be shown but it is wholly incompetent to show subsequent acts for any purpose.' Citing People v. Clark, 33 Mich. 112; People v. Etter, 81 *Id.* 571; People v. Hubbard, 92 *Id.* 326. The other case is that of Mathews v. The Detroit Journal, 123 Mich. 609, decided April 3, 1900. The plaintiff, Mrs. Mathews, had obtained a heavy verdict against the defendant, in an action of libel for having published an article charging, that on a certain day at the village of Wayne, she had committed adultery with one Ainsworth. In an opinion written by Justice Montgomery the judgment of the lower court is reversed for the following reason: 'The defendant offered to show that about October 25th, plaintiff and one Ainsworth were seen on Fort Street Bridge, Detroit, embracing and kissing each other. This testimony was excluded, the court remarking, "Improper conduct in October don't prove improper relations in July." This offer presents the most important question in the case. The question of whether subsequent acts of familiarity and intimacy can be shown in corroboration of testimony tending to show adulterous intercourse, has never been distinctly decided in this court. But we find the courts of other states have frequently had occasion to consider this question and in numerous and well considered cases the admissibility of such testimony has been affirmed. * * * The testimony should have been received.' Justices Montgomery and Long, the authors, signed both of these opinions, although they decide exactly the same question in directly opposite ways. The latter opinion innocently asserts that this question has never before been passed on by the Supreme Court of this State, while the first opinion shows five distinct rulings on it. Not a word is said in the last opinion of the intention of the court to overrule the earlier decisions, so that we are left in profound ignorance of what he law really is."

While it is difficult to understand how a court of last resort can contradict itself on so important a rule of law in such a short interval or why the diligence of counsel should not have disclosed the contradiction, it is to be noted that the Supreme Court of Michigan is not alone in this failing. It is a fault more common with courts of appeal now than formerly, owing, no doubt, to the vast amount of business which overcrowds the courts of the present day and make anything like a carefully worded and considered opinion out of the question. Of the two opinions of the Michigan court alleged to be in contradiction, the latter is undoubtedly the correct one and in line with the great weight of authority. In all cases charging adulterous intercourse evidence of the particular acts alleged to constitute the unlawful intimacy must first be introduced before any other evidence whatever is admissible. What other acts of intimacy may be proven in corroboration has been a matter of some conflict of opinion. Very early, however, the rule became established that evidence having

been introduced of adulterous intercourse during the period covered by the indictment, proof of similar acts or improper conduct prior to that time may be received in corroboration. State v. Pippin, 88 N. Car. 646; State v. Markins, 95 Ind. 464; Cross v. State, 78 Ala. 430; Brevaldo v. State, 21 Fla. 789; State v. Way, 5 Neb. 283; Commonwealth v. Durfee, 100 Mass. 146; State v. Marvin, 35 N. H. 22; State v. Henderson, 84 Iowa, 161; Commonwealth v. Bell, 166 Pa. St. 405. This rule constitutes an exception to the general rule of evidence in criminal proceedings, that the commission of other, though similar, offenses by the defendant cannot be proven to show the likelihood of his having committed the offense charged. But, as was said in a recent case, this rule has been, of necessity, specially relaxed in cases where the offense consists of illicit intercourse between the sexes. State v. Markins, 95 Ind. 464. Later the rule was again extended and has now been generally adopted that, on a charge involving illicit intercourse, during a particular period, evidence of acts subsequent to that time, which tend to illustrate or explain similar acts within the particular period, are admissible in connection with evidence of similar acts during the time laid, to prove illicit intercourse as charged. See Brooks v. State, 52 Ala. 24; State v. Bridgman, 49 Vt. 202; Cole v. State, 65 Tenn. 243; State v. Williams, 76 Me. 480; Commonwealth v. Nichols, 114 Mass. 285. This latter extension of the rule however, has not been universally accepted. For instance, some States, like Iowa, refuse to include subsequent acts within the exception to the general rule and hold that where the charge is of one act of adultery to which evidence has been given, the prosecution is not permitted afterwards to introduce evidence of other acts committed subsequently. State v. Donovan, 61 Iowa, 278, citing 2 Greenleaf on Evidence, sec. 47.

LANDLORD AND TENANT—LIABILITY OF LANDLORD FOR DEFECTIVE PREMISES.—One of the most controverted questions of law to-day is the liability of a landlord for the defective condition of his premises. The common law practically excused the landlord from any liability whatever in such cases. But since the late case of Wilcox v. Hines, 100 Tenn. 538, so severely criticised by law journals and annotators, the tendency has been to relax the rule at common law in favor of the tenant and hold the landlord liable, not only for his positive torts, but also for his concealment of latent defects within his knowledge or which ought to be. This tendency is well illustrated by the recent case of Moore v. Parker, 64 Pac. Rep. 75, where the Supreme Court of Kansas held that a landlord is not an insurer or warrantor, nor is he compelled to exercise constant care and inspection; but if he knows that the premises which he is about to let are defective and in a dangerous condition, and especially if such dangerous or defective place is not obvious or is not discoverable to the tenant by the exercise of ordinary care, and he does not inform the tenant of such defective or dangerous place, and injury is occasioned thereby to the tenant or a member of his family who is not aware of such defective or dangerous place, while in the exercise of ordinary care, the landlord is liable to damages.

The facts in this case show that while the plaintiff in error was about her household duties upon said premises, drawing water from a well used for domestic purposes, and located at the residence, the platform around the well gave way, precipitating her into the well, from which she sustained personal injuries. The allegations in the petition, which was held good on general demurrer, were in substance as follows: First, the allegation of the lease between the parties and the occupation of plaintiff thereunder; that the well that was intended for use for domestic purposes, and situated at the porch of the residence, was covered with a wooden platform or planks; that the defendants in error had built the platform over this well, and had constructed it of inferior and unsuitable material, selected by them for that purpose, and used in its construction by their direction; that the sleepers or stringers under this platform were in a defective and unsafe condition at the time of the leasing and taking possession by plaintiff in error; that the defendants in error knew this, and, notwithstanding their knowledge, they negligently, fraudulently and carelessly concealed it from the plaintiff, as well as from her husband, the lessee, and failed to disclose said knowledge to the plaintiff or her husband; that the defects in the sleepers or stringers were not obvious, and could not be discovered by the exercise of ordinary care; that the plaintiff in error did not know of such defective material or the dangerous condition of the platform; that in the performance of her household duties she was required to, and frequently did, draw water from this well; and that upon this occasion, about two months after they had gone into possession, she was in the exercise of ordinary care, and while performing her household duties, and in attempting to draw water from this well, the sleepers or stringers under the platform around the well gave way, and she was precipitated into the well, whereby she sustained personal injuries.

The court makes this excellent statement of the rule of law to be applied to such a statement of facts:

"In deciding this question, we are not called upon to determine the liability of the landlord, where he did not have actual knowledge of the defective condition of the premises. A landlord is not [an insurer or warrantor, nor is he compelled to exercise constant care and inspection; but if he knows [that the premises which he is about to let are in a dangerous condition, and especially if such danger or defect is not obvious, or is not discoverable by the means of the tenant by the exercise of ordinary care, and does not in-

form him of such danger and injury is occasioned thereby to the tenant or a member of his family, the landlord is liable in damages. The law requires good faith on the part of the landlord towards his tenant. The defect existed when the premises were leased, and the defendants in error knew this, and intentionally concealed it from their lessee; and, it being a defect not discoverable by the lessee or his family in the exercise of ordinary care and reasonable diligence, we have been unable to find any principle upon which the demurrer should have been sustained. The rule seems to be that in the absence of a contract to repair, or warranty of condition, both landlord and tenant must use reasonable care and diligence. If the tenant neglect such reasonable care and diligence to ascertain the condition of the premises, or, knowing their condition, assumes the risk, then he cannot recover against the landlord. On the other hand, if the landlord actually knows they are unsafe, and conceals or misrepresents their condition, then he is liable; the tenant being in no fault."

The court bases this statement of the law on the following authority: Wilcox v. Hines, 100 Tenn. 538; Edwards v. Railroad Co., 99 N. Y. 249; Coke v. Gutkese, 80 Ky. 598. The case of Wilcox v. Hines, however, goes further than the statement of the court in this case and holds the landlord liable for what he ought to know as well as for what he actually knows. For full discussion of this important question see 52 Cent. L. J. 388.

THE POWER OF ONE PARTY TO AN EXECUTORY CONTRACT TO STOP ITS PERFORMANCE WITHOUT THE CONSENT OF THE OTHER.

It has often been ruled by the courts that one party to an executory contract may rightfully stop performance under it at any stage before full completion, but subject to the liability of responding in damages to the party able and willing to continue its execution. Indeed, it is believed, that in all cases except where equity will enforce specific performance—such instances as a class forming an exception to the general rule—one who is willing to subject himself to the liability for such damages as are recoverable at law for the breach of his contract, has the legal right to stop performance at any point before its full accomplishment. The right is usually denominated the power to stop performance, and notwithstanding its exercise is deemed to constitute a breach of the contract, it nevertheless, to such an extent changes in law the relations of the parties interested, that it places the one willing to continue under an entire new obligation, and one not specified in the contract. Such obligation is never stated at less than to refrain from further performance, and often there is superadded the duty of using all ordinary care and making all reasonable exertion to render the injury as light as possible.[1] By the exercise of the power mentioned the contract is not put an end to as upon a rightful rescission, but survives in force as a basis of the right to recover damages by the party not in fault. The liability to respond in damages on the part of the party stopping performance, and the right of the party willing to perform to recover damages, constitute the foundation of the power to stop performance accorded by the law to the one party and the obligation thereby imposed upon the other to refrain from performance. The damages awarded by the law to the party not in default for a breach of the contract—and the exercise of the power under consideration is nothing other than a breach—are deemed to be the equivalent, measured in money, of the advantages to be derived from complete performance, or as often expressed, full compensation for the injury inflicted. In awarding damages the law aims fully to compensate the party not in fault for the injury suffered.[2] Indeed, from the presumed inadequacy in some instances of the damages recoverable at law to compensate for the injury arises the jurisdiction in equity to decree specific performance.[3] And therefrom also doubtless may be discovered one of the reasons for excepting contracts of which equity will decree a specific performance from the general rule under consideration.[4] However, in all cases where the damages recoverable at law for the breach of a contract are judicially deemed a just equivalent for the injury there seems to exist in favor of the party willing to subject himself to a liability for such damages, the right of stopping performance by the other party to

[1] 1 Suth. Dam. 88, and cases cited; Dillon v. Anderson, 43 N. Y. 231.

[2] Moline Scale Co. v. Beed, 52 Iowa, 307, 3 N. W. Rep. 96; Griffin v. Colver, 16 N. Y. 489; Allison v. Chandler, 11 Mich. 542.

[3] Morgan v. Bell, 3 Wash. 554, 28 Pac. Rep. 925, 16 L. R. A. 614; 3 Par. Cont. 350, ch. 11.

[4] Marsh v. Blackman, 50 Barb. 333.

the contract at any period.[5] In the nature of things the power exists in respect of executory contracts only, and though as before intimated its exercise is deemed a breach of the contract, it seems nevertheless to adhere in and constitute an implied provision or incident of the contract itself,[6] and in point of time to continue until the full execution of the contract is accomplished by the party willing to perform. An early case in New York with great force and clearness states the rule and the reason upon which it rests.[7] Of this decision Mr. Bishop, in his work on Contracts,[8] says: "The opinion in this case is brief; it cites no authorities, but in legal argument it is conclusive," and it might be added that no subsequent decision seems to have discovered or suggested any additional reason for the rule. The case was: The defendant delivered a number of paintings to the plaintiff to be cleaned and repaired at certain prices stipulated for each. After the plaintiff had commenced work upon them, the defendant directed him not to go on as he had concluded not to have the work done. The plaintiff, however, finished the work and claimed to recover for the whole, insisting that the defendant had no right to countermand the order. At the trial requests for instructions by each party according to his contention were asked, but the court instructed the jury that inasmuch as the plaintiff had commenced the work before the order was revoked, he had a right to finish it, and to recover the whole value of his labor and for his materials furnished. The verdict and judgment were for the plaintiff. In considering the defendant's exceptions to the charge upon errors assigned, the court says: "* * * The defendant by requiring the plaintiff to stop work upon the paintings violated his contract, and thereby incurred a liability to pay such damages as the plaintiff should sustain, * * * but the plaintiff had no right by obstinately persisting in the work, to make the penalty upon the defendant greater than it otherwise would have been. To hold that one who employs another to do a piece of work is bound to suffer it to be done at all events would sometimes lead to great injustice. A man may hire another to labor for a year, and within the year his situation may be such as to render the work entirely useless to him. The party employed cannot persist in working, though he is entitled to the damages consequent upon his disappointment. So if one hires another to build a house, and subsequent events put it out of his power to pay for it, it is commendable in him to stop the work and pay for what has been done, and the damages sustained by the contractor. He may be under a necessity of changing his residence, but upon the rule contended for, he would be obliged to have a house which he did not need and could not use. In all such cases the just claims of the party employed are satisfied when he is fully recompensed for his part performance and indemnified for his loss in respect to the part left unexecuted; and to persist in accumulating a larger demand is not consistent with good faith toward the employer." The judgment was reversed.

It is noticeable that in the suppositious cases mentioned the court finds reasons excusing the discharge of the laborer and the discontinuance of work upon the house, but in the statement of facts in respect to which the decision was made, no excuse is discovered or referred to. It is, therefore, clearly inferable that the event by which a party is induced to break his contract is not a material subject of inquiry in an action to recover damages for such breach. And to such effect doubtless is the law as disclosed by the tenor of the decisions upon the questions, though the language of some of the common-law prececents would seem to indicate that the rule is otherwise.

Upon the authority of this decision the Supreme Court of Vermont,[9] held where a contract in writing had been entered into to do all of a certain class of work upon three miles of railroad at a specified price per cubic yard, and the plaintiffs had performed a part of it when the defendants directed and requested the plaintiffs to discontinue the

[5] The right is most frequently designated "power," but it is believed inaptly, inasmuch as it seems to be more in the nature of a right or privilege. But it is not necessary to be hypercritical, and so either designation is used at convenience.

[6] Though the statement of the text seemed paradoxical, yet it is believed to be fully justified by the decisions considered, *infra*, herein.

[7] Clark v. Marsiglia, 1 Denio, 317.

[8] Sec. 839, note 1.

[9] Derby v. Johnson, 21 Vt. 17.

further execution of the contract, and they so did, that it was not an abandonment but a breach of the contract. Hall, J., says: "The direction of the defendants to the plaintiffs to quit the work was positive and unequivocal, and we do not think the plaintiffs were at liberty to disregard it. In Clark v. Marsiglia, 1 Denio, 317, it was held, that the employer in a contract for labor had the power to stop the completion of it, if he chose—subjecting himself thereby to the consequences of a violation of his contract; and that the workman, after notice to quit work, had not the right to continue his labor and claim pay for it, and this seems to be reasonable." The court further expounds the reason for the rule as applied to the case before it, and says: "Rather than an injury so greatly disproportioned to that which could possibly befall the workman should be inflicted on the employers, it seems better to allow them to stop work, taking upon themselves, of course, all the consequences of such a breach of their contract. Such we think is and ought to be the law." The decision also holds that it was optional with the plaintiffs to treat the contract as rescinded from the beginning, and, though the defendants urged that the rate of compensation specified in the contract should be the only rule of recovery, it was held that the plaintiffs might recover as upon a *quantum meruit* for the work done.[10] The court reasons that to hold to the rule contended for by the defendants "would impose upon the plaintiffs a contract they have never made." The location of the railroad had been changed from the place where the work was contracted to be done. So there was ample excuse for the direction given not to continue the work. And the same court in a later case,[11] speaking by Peck, J., says: "While a contract is executory, a party has the power to stop performance on the other side, by an express direction to that effect, by subjecting himself to such damages as will compensate the other party for being stopped in the performance on his part at that point or stage in the execution of the contract."[12] The contract in this case was for the purchase and delivery of a quantity of potatoes, and a fall in the market price was the reason by which the defendant was induced to direct the plaintiff not to make further purchases. The same principle was applied to a contract between a city and a lighting company,[13] wherein it appeared that the city by a resolution of its common council approved by the mayor, declared such contract at an end and wholly rescinded and so notified the company. The court say:[14] "As we understand the law applicable in such cases, it gives to the city, notwithstanding the contract, the absolute right, at its own election, to decline to receive any more gas under it, thereby refusing performance on its part.[15] And the doctrine has been applied to a contract for future employment and service where the employer at the time the service was to commence absolutely repudiated the contract.[16] The case holds that the remedy of the employee is not in action for wages, but to recover damages for the breach of the contract. So when the state had entered into a contract with an individual for the erection of a public building and afterward the legislature passed an act suspending and discontinuing the work or providing for its performance by other agencies, it was held that the state stands, in this respect, in the same position as an individual, and may at any time abandon an enterprise and refuse to allow the contractor to proceed. Such refusal would be only a violation of its contract.[17] The rule that the remedy is limited to the recovery of damages is applicable to contracts only while they are executory and the consideration for which is entire and not divisible.[18] In Butler v. Butler[19] the case was:

[10] Citing Tyson v. Doe, 15 Vt. 571, and distinguishing Koon v. Greenman, 7 Mich. 121. But it is not believed that the rule stated in the text is generally accepted.

[11] Danforth v. Walker, 40 Vt. 239, 37 Vt. 239.

[12] See also Freidlander v. Pugh, 43 Miss. 117, 5 Am. Rep. 781, citing with approval Clark v. Marsiglia, 1 Denio, 317.

[13] City, etc. v. The Nebraska, etc. Co., Neb. 339, N. W. Rep. 870.

[14] Lake, J., writing the opinion.

[15] Citing Clark v. Marsiglia, 1 Denio, 317.

[16] Howard v. Daly, 61 N. Y. 362.

[17] Lord Thomas, 64 N. Y. 107, citing only Clark v. Marsiglia, 1 Denio, 317. It is also held that the obligation of the contract is not impaired by such refusal, the contractor having a remedy for his damages by appeal to the legislature. See also People v. Stephens, 71 N. Y. 527.

[18] Moline Scale Co. v. Beed, 52 Iowa, 307, 3 N. W. Rep. 96.

[19] 77 N. Y. 472.

The plaintiff contracted to erect on the defendant's premises a complete machine all ready to make gas. The defendant agreed to pay freight on the machine and to furnish tank and house and pay $1,500 "when the works are on the ground." The plaintiff shipped the materials and parts of the machine which the defendant received and paid the freight thereon, but did not permit the plaintiff to put up the machine. The court held that an action to recover the contract price was not maintainable; that as the contract was entire and had not peen performed, and as the contract price was not divisible no recovery could be had for any portion of it. The delivery of the parts only did not constitute the delivery of a complete article; the property of such parts did not vest in the defendant and the consideration or contract price not being divisible the plaintiff's only remedy was to recover damages for a breach of the contract.[20] To the same effect is Hosmer v. Wilson,[21] wherein Christiancy, J., after stating the reason assigned for the holding in Clark v. Marsiglia, says: "This doctrine is fully approved in Derby v. Johnson above cited.[22] This would seem to be good sense and, therefore, sound law. And it would seem that any other rule must tend to the injury and, in many cases, to the ruin of all parties." The rule has been approved in Massachusetts.[23] The court says: "A party to an executory contract may stop its performance by an explicit order, and will subject himself only to such damages as will compensate the other party for being deprived of its benefits." And the explicit order or notice would be sufficient if given to such agent or employee as was authorized to stand in the place of and represent his principal in the particular branch of his business connected with the subject of the contract, though such notice should never come to his personal knowledge.[24]

And again the question was directly presented to the Supreme Court of North Dakota in 1892.[25] Corliss, C. J., writing for the court, says: "The utmost that can be urged is that he (the defendant) arbitrarily refused to perform his part of the contract. This would subject him to an action for damages for breach of the contract. But the plaintiffs could not, in the face of this refusal, undertake to carry to completion the work * * * and insist that they were entitled to recover from the appellant his share of the contract price. The authorities are very clear on this point."[26] The defendants were two of a large number of subscribers agreeing to contribute specified sums towards the contract price of a creamery to be built by the plaintiffs. No reason is assigned for the defendant's countermand of his subscription. He acted arbitrarily.

And, the same year the question came before the Supreme Court of Minnesota.[27] The general principle is fully affirmed upon the authority of the case of Davis v. Bronson, just cited and of some of the decisions in note 25, *supra*. Collins, J., continuing says: "The legal right, on general principles, of either party, to violate abandon, or renounce his contract, on the usual terms of compensation to the other for the damages which the law recognizes and allows—subject to the jurisdiction of equity to decree specific performance in proper cases—is universally recognized and acted upon."[28] It should be noted also that in this instance no reason, other than the arbitrary will of defendant, is found or required justifying the exercise of the right. In each of these actions the contract price was sought to be recovered.[29]

[20] Citing Ichbald v. The Western, etc., 17 C. B. (N. S.) 733; Blanch v. Cocheran, 8 Bing. 14.

[21] 7 Mich. 204.

[22] 21 Vt. 17.

[23] Collins v. Delaporte, 115 Mass. 159.

[24] Dillon v. Anderson, 43 N. Y. 231.

[25] Davis v. Bronson, 2 N. Dak. 300, 50 N. D. Rep. 6.

[26] Citing Bishop. Cont., secs. 837 841; Danforth v. Walker, 37 Vt. 239, 40 Vt. 257; Moline Co. v. Beed, 52 Iowa, 307, 3 N. W. Rep. 96; City of Nebraska v. Coke Co., 9 Neb. 339, 2 N. W. Rep. 870; Clarke v. Marsiglia, 1 Denio, 317; Butler v. Butler, 77 N. Y. 473.

[27] Gibbons v. Bente, 51 Minn. 499, 53 N. W. Rep. 756.

[28] Citing Bishop, Cont. par. 837; Leake, Cont. 868, 1044; 1 Suth. Dam. 113; 2 Suth. Dam. 193, 526; Hickley v. Steele Co., 121 U. S. 264, 7 Sup. Ct. Rep. 875; Ins. Co. v. McAden, 109 Pa. St. 399, 1 Atl. Rep. 256; Frost v. Knight, L. R. 7 Exch. 112; Roper v. Johnson, L. R. 8 C. P. 167; Laird v. Rim, 7 Mees. & W. 474; Hochster v. Dela Tour, 2 El. & Bl. 678.

[29] The cases cited from North Dakota and Minnesota were upon the same general form of contract, only differing in names and location. A motion for a rehearing was made in each court. In the former case the court adhered to its decision holding the contract to be entire. In the latter case the court granted a rehearing, and thereupon receded from its former decision, holding that the contract created a

The exercise of the power by an explicit direction, or other sufficient act constituting a breach of the contract, or, if performance has been entered upon, not to continue in the carrying out of the contract, or any act preventing such continuance, does not in any exact sense, of itself, effect a rescission of it. By rescission a contract is put an end to and no longer exists as the basis of any right, but by a breach it continues effective for the recovery of damages by the party injured —in some cases as his only basis of recovery—in others, as such basis at his option. The distinction is found in the fact that the rights of the party not in fault, as he may elect, are not the same if the breach is effected after, as when it occurs before performance is entered upon. In the latter case there is no recovery of damages *eo nomine*, upon and for a breach of the contract, but in the former instance it has been often, but not always held—the decisions are not harmonious—that the party willing to perform may treat the contract as rescinded from the beginning and recover upon the *quantum meruit* for the work done.[30] But the rule seems to have its limitations and "the right to sue * * * on a *quantum meruit* is frequently and emphatically stated to depend on the fact that the contract has been discharged."[31] The principle has been stated thus: "If he has done all or a portion of that which he promised, so as to have a claim to a money payment for such performance, he may deal with such a claim as due upon a different contract arising upon a promise which is understood from the acceptance of an executed consideration."[32] Thus it appears that the party not in default, upon a breach occurring after he has entered upon performance may, in some instances, treat the contract as rescinded from the beginning, and have a recovery of the value of his part performance without regard to the contract. But the general rule of law formulated so as to embrace all cases under all circumstances clearly is to the effect that where the breach occurs before performance, or after part performance, where damages for the breach of the contract are claimed and not the mere value of part performance, or where consideration for full performance is in something other than money, the action must be predicated upon the contract alone, and a recovery had for damages in the strict sense only. The manner of breach, limited to the narrow question under consideration, must be such that the other party is not at liberty to disregard it, and is usually effected by an explict direction not to commence, or not to continue performance, or notice that the party giving it will not be bound by the contract or that he renounces its obligation. But the renunciation must go to the whole contract.[33]

At what period with reference to the time when performance is due, the power to stop performance may be exercised, has been much discussed in the courts. The question does not arise except in case of an anticipatory breach. That a contract may be broken by renunciation by a party to it before the time for performance has come seems to be well settled.[34] However, instances are found where it seems to be held that if the renunciation or other step constituting a breach is made or taken before performance is due, it is yet incumbent upon the other party to treat the contract as in force up to the time to begin its performance, as before then the party who has signified his renunciation may change his purpose and abide by the contract.[35] The point, doubtless, is to some extent dependent upon the acts to be done to effect performance, as whether the mere delivery of something already in existence is required, or whether previous preparation to perform is necessary, as when the party is required to prepare or construct the thing to be delivered before the day of tender. In the latter instance clearly any direction given or other act done by one party at whatever

several liability on the part of each subscriber to the amount of his subscription only, and that in other respects the interests of the subscribers were joint, and that all must unite in order to repudiate and renounce the contract.

[30] Derby v. Johnson, 21 Vt. 17; Hulle v. Hightman, 2 East, 145; Weeks v. Burt, 78 N. Y. 191; Mitchell v. Scott, 41 Mich. 108. See also cases cited in previous notes.

[31] Anson, Cont. p. 366 (2d Am. Ed.), and cases cited.

[32] Anson, Cont. p. 367 (2d Am. Ed.), and cases cited.

[33] See cases cited in previous notes.

[34] Hochster v. Dela Tour, 2 El. & Bl. 678; Bungee v. Koop, 48 N. Y. 225; Howard v. Daly, 61 N. Y. 362; Ferris v. Spooner, 102 N. Y. 10; Platt v. Brand, 26 Mich. 173 (2d Series), and cases cited in note.

[35] Daniels v. Newton, 114 Mass. 533; Kadish v. Young, 108 Ill. 170, 48 Am. Rep. 548, and cases cited; Clark v. N. B. & Q. Co. Co., 67 Fed. Rep. 222.

time whereby the other party is placed under obligation to refrain from increasing the damages must constitute a breach of the contract. The general rule as already shown seems to be that any explicit order, or positive assertion of a wish that performance be abandoned, or of a present intended repudiation of the contract, even before performance is due or any preparation to that end begun, or placing "himself in an attitude of impossibility of performance" is sufficient, and that decisions holding such instances not to be within the rule thus stated are exceptional.[36] A perusal of the decisions cited in the several notes hereto will fully disclose the contention for and against the rule. In Marks v. Van Eeghen,[37] Wallace, C. J., writing for the court (Circuit Court of Appeals, Second Circuit), and citing a great nnmber of decisions both English and American, says: "In veiw of the overwhelming preponderance of adjudication, we think it must be accepted as settled law that where one party to an executory contract renounces it without cause, before the time for performing it has elapsed, he authorizes the other party to treat it as terminated, without prejudice to a right of action for damages; and, if the latter elects to treat the contract as terminated, his right of action accrues at once." But it must appear that the intention to repudiate the contract was distinctly signified. It is not enough to prove an equivocal or indeterminate renunciation.

There is another point of much interest to the effect that if the party not violating the contract keeps it, as he may, in force for his own benefit, up to the time performance is due—it is his right to have his damages ascertained at that date—he also keeps the contract alive for the benefit of the other party. Therefore, if the notice of intention not to perform is withdrawn before it is acceded to or acted upon as a breach, the right to treat the contract as broken is lost, and the rights of the several parties are the same as they were before the notice was given.

[36] Roebling & Sons Co. v. Lock S. F. Co., 130 Ill. 660; Kadish v. Young, 108 Ill. 170, 48 Am. Rep. 548, and cases cited; Roehm v. Horst, 91 Fed. Rep. 345, 33 C. C. A. 550, 62 U. S. App. 620, 48 Fed. Rep. 565, and cases cited. This case has recently been affirmed by the United States Supreme Court, but the opinion is not at hand. A brief notice of it may be found in Vol. 51, Cent. L. J. p. 161, dated August 31, 1900.

[37] 85 Fed. Rep. 853, 30 C. C. A. 208.

And further, such failure or refusal to accede to the anticipatory breach enables the party committing it to take advantage of any intervening circumstances justifying non-performance—as where performance becomes illegal or is excused by matter subsequent, or affording him the means of mitigating his loss, as a change in the market.[38]

It has been already noticed that cases where a court of equity will decree specific performance of a contract form an exception to the general rule under consideration. That fact alone seems to invest such contracts with other privileges at law. Thus it is said: "If it be a case for specific performance, the plaintiff having the power to perform is at liberty to do so and recover at law under the contract."[39] It was so ruled in an action to recover an installment due on a contract made by the defendants for the support of their father during his life, though they had given notice that they would pay nothing further under said contract. The circumstances suggest that the recovery at law according to the provisions of the contract was nothing other or different than the specific performance which equity would have decreed. However, though the result is the same it is reached by proceeding upon other and distinct lines.

The construction of the subject expressed in the title of this article with its immediate incidents is easily susceptible of expansion into a treatise. So it has not been attempted to review in detail all the arguments advanced in support or challenge of the questions presented. However, it is contended that the conclusions reached are shown to be maintainable upon principle and reason, and that they are in harmony with the great weight of authority both in England and in this country.

GEO. W. NEWTON.

[38] Avery v. Bronson, 5 E. & B. 714; Frost v. Knight L. R. 7 Exch. 111, 1 Eng. Rep. 218; Brown v. Muller, L. R. 7 Exch. 319, 3 Eng. Rep. 429; Roper v. Johnson, L. R. 8 C. P. 167, 4 Eng. Rep. 397.

[39] Marsh v. Blackman, 50 Barb. 333.

CARRIERS—PERSONAL INJURIES—FREE PASS—RELEASE—EFFECT—NEGLIGENCE.

PAYNE v. TERRE HAUTE & I. R. CO.

Appellate Court of Indiana, May 10, 1901.

Where a passenger riding on a free pass was injured through the negligence of a railroad company's

employees, an answer in a suit for such injuries that, by an express stipulation indorsed on the pass, the acceptance and use thereof, was a release of any injuries which might be sustained by the person to whom it was issued, will not bar an action brought by such passenger against the company for negligence

WILEY, J. The only question involved in this appeal is the sufficiency of the second paragraph of answer, a demurrer to which was overruled. The complaint is in three paragraphs, and charges that appellant was a passenger upon one of appellee's trains, and while so riding as a passenger he was injured by the carelessness and negligence of appellee's servants in charge of the train. In the second paragraph of answer it is charged that, at the time appellant was injured in the manner stated in the complaint, he was riding upon the car and train of the appellee, and was entitled to be there solely by virtue of a pass theretofore issued to and accepted by him and used as a pure gratuity, and that by an express stipulation indorsed on the back of said pass, it was provided that by its acceptance and use any and all claims for injuries that might accrue to the person named on the face of the pass should be released. The answer further avers that the appellant was the only person named on the face of said pass, and that he was riding upon said pass at the time he was injured, and had paid no fare, nor was any expected of him. A copy of said release was indorsed upon the pass, as set out in full in the answer, and is as follows: "By its acceptance and use any and all claims for injuries to person or for loss or damage to baggage that might accrue to the person or persons named on the face thereof are released." It is then averred that the appellant accepted said pass as a pure gratuity, that he paid nothing therefor, and that he had full knowledge of the express release above set out and indorsed thereon. After the court had overruled a demurrer to this paragraph of answer, the appellant refused to plead further, and suffered judgment to be entered against him for costs. It is obvious, therefore, that the question for determination is simply this: Can a railroad company exempt itself from liability to a passenger on one of its trains who is injured by the negligence of its employees while he is being carried as such passengers upon a gratuitous pass? This question must be answered in view of the fact that the passenger accepts such pass with a full knowledge of the limiting clause indorsed upon its back; for the answer avers that the appellant did so accept and use the transportation with such knowledge, and the demurrer admits the truth of the allegation. The decisions upon this proposition in the different state courts, and also the federal courts, are in irreconcilable conflict; but the courts in this state have uniformly held that common carriers are subject to the same liability for injuries resulting from negligence to persons riding on free passes as they are to those who pay full fare. To enter into a discussion of the proposition would be useless. We are bound by the law as declared by the supreme court. In Railway Co. v. Faylor, 126 Ind. 126, 25 N. E. Rep. 869, it was held that an answer pleading a contract of release indorsed on a free pass upon which appellee was riding at the time he was injured would not bar an action for damages based upon the negligence of the company. The answer in that case was in principle the same as the second paragraph of answer here. To the same effect are the following cases: Railway Co. v. Nickless, 71 Ind. 271; Railway Co. v. Selby, 47 Ind. 471. Upon the authority of these cases the answer was fatally defective. In our judgment, the ruling in the cases cited is not in conflict with the more recent case of Railway Co. v. Keefer, 146 Ind. 21, 44 N. E. Rep. 796, 38 L. R. A. 93, as urged by appellant; nor is a different rule there declared. Judgment reversed, and the court below is directed to sustain appellant's demurrer to the second paragraph of answer.

NOTE.—*Limitation of Carriers' Liability for Injuries to Passengers.*—No more difficult or controverted question of law arises more often to perplex the courts of the present day than the one covered by the subject of this annotation. The authorities cannot be reconciled.

The old rule at the common law prohibited any attempt whatever on the part of a common carrier, either by notice or contract, to limit the liabilities imposed by the common law. Cole v. Goodwin, 19 Wend. (N. Y.) 257, 32 Am. Dec. 470; Fish v. Clapman, 2 Ga. 349, 46 Am. Dec. 393. One modification of this rule has been made and universally recognized and conceded,—that a common carrier may limit its liability, by special contract, for injuries not arising from its own negligence or that of its servants. Merrill v. Express Co., 62 N. H. 514; New York Central R. R. Co. v. Lockwood, 17 Wall. (U. S.) 357; Louisville, etc. R. R. v. Gilbert, 88 Tenn. 430; Christenson v. Express Co., 15 Minn. 270; Rosenfeld v. Rai.road, 103 Ind. 121, 53 Am. Rep. 500. This limitation of liability by the carrier, however, cannot be affected by notice or otherwise that by special agreement, oral or written. Baltimore, etc. R. R. v. Campbell, 36 Ohio St. 647, 38 Am. Rep. 617; Smith v. Railroad, 64 N. Car. 235; Kansas City, etc. R. R. v. Rodebaugh, 38 Kan. 45, 5 Am. St. Rep. 715; Solon v. Railroad (Iowa, 1895), 63 N. W. Rep. 692; St. Louis, etc. R. R. v. Weakly, 50 Ark. 397, 7 Am. St. Rep. 104. *Contra* in Pennsylvania: Lake Shore, etc. R. R. v. Rosengweig, 113 Pa. St. 519; Camden, etc. R. R. v. Baldauf, 16 Pa. St. 67, 55 Am. Dec. 481. The rule is well stated in New Jersey Navigation Co. v. Bank. 6 How. (U. S.) 344, where the court said: "The common carrier is in the exercise of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned. And this is not to be implied or inferred from a general notice to the public, limiting his obligation, which may or may not be assented to. * * * The burden of proof lies on the carrier, and nothing short of an express stipulation by parol or in writing should be permitted to discharge him from duties which the law has annexed to his employment."

At this point the authorities diverge. Can a com-

mon carrier, by special contract supported by a valuable consideration, as for instance, a reduction of fare, limit its liability for its own negligence or that of its servants? The leading case of this subject, and undoubtedly still sustained by the weight of authority, is that of New York Central R. R. v. Lockwood, 17 Wall. (U. S.) 317, where the United States Supreme Court clearly and definitely decided the question propounded in the negative, holding, first, that a common carrier cannot lawfully stipulate for exemption from responsibility when such exemption is not just and reasonable in the eye of the law; secondly, that it is not just nor reasonable for a common carrier to stipulate for exemption from responsibility for the negligence of himself or servants; thirdly, that these rules apply both to carriers of goods and carriers of passengers for hire, and with special force to the latter. This decision is undoubtedly supported by the great weight of authority. Louisville, etc. R. R. v. Taylor, 126 Ind. 126; Missouri Pacific R. R. v. Ivy, 71 Tex. 409, 10 Am. St. Rep. 758; Jones v. Railroad, 125 Mo. 666, 28 S. W. Rep. 883, 46 Am. St. Rep. 514, 26 L. R. A. 718; B. & O. R. R. v. McLaughlin, 73 Fed. Rep. 519; Doyle v. Railroad, 162 Mass. 66, 44 Am. St. Rep. 335; Rose v. Railroad, 39 Iowa, 246; Davis v. Railroad, 93 Wis. 470, 67 N. W. Rep. 16; Cleveland, etc. R. R. v. Curran, 19 Ohio St. 1; Louisville, etc. R. R. v. Oden, 80 Ala. 38; Southern Express Co. v. Moon, 39 Miss. 822; Moulton v. Railroad, 31 Minn. 85. The reason of the rule thus announced is well stated in Louisville, etc. R. R. v. Taylor, *supra*, where the court said: "A stipulation that the carrier shall not be bound to the exercise of care and diligence is in effect an agreement to absolve him from one of the essential duties of his employment. · · · The law will not allow the carrier thus to abandon his obligation to the public, and hence all stipulations which amount to a denial or repudiation of duties which are of the very essence of his employment will be regarded as unreasonable, contrary to public policy, and therefore void."

Another line of authorities hold to a contrary doctrine. This has been called the "New York rule," although it is difficult to see why it should be called the rule of one state over another as each state reached its conclusion without relying particularly on the authority of any state. In fact an examination of the cases will show that these authorities rely more on the English construction of a railroad's right to limit its liability under the Railway and Canal Act than upon any other outside authority. The rule adopted by these authorities is to the effect that a common carrier may make a valid contract with the passenger exonerating itself from all liability not caused by the fraud or willful wrong of the company. Meuer v. Railroad, 5 S. Dak. 568, 59 N. W. Rep. 945, 25 L. R. A. 81; Arnold v. Railroad, 83 Ill. 273, 25 Am. Rep. 386; Higgins v. Railroad, 28 La. Ann. 133; Smith v. Railroad, 29 Barb. (N. Y.) 132; Wilson v. Railroad, 97 N. Y. 87; Bissell v. Railroad, 25 N. Y. 602; Kinney v. Railroad, 32 N. J. L. 407, 90 Am. Dec. 671; Baltimore, etc. R. R. v. Brady, 32 Md. 333. The reason of this rule is well stated in the case of Bissell v. Railroad, *supra*, where the court said: "The principles being established that parties may lawfully enter into contracts of this nature, there is no limit to the extent and variety of modification which may be given to such contracts. The passenger may assume all risks arising from the condition of the track, or of the cars, or from the negligence of the agents, of all of them or of any class of them. There is no danger which the party may encounter, resulting from the journey, which he may not assume the responsibility of, and he may assume all or any portion of it." A distinction sought to be made in the case of Perkins v. Railroad, 24 N. Y. 196, holding a railroad liable for its own negligence, but not that of its servants, has been generally repudiated. See Gulf, etc. R. R. v. McGowan, 65 Tex. 645. It might also be mentioned that there is a line of cases holding that a common carrier may limit its liability for ordinary negligence but not for gross negligence. Chicago, etc. R. R. v. Chapman, 133 Ill. 96, 23 Am. St. Rep. 587; Bosiowitz v. Express Co., 93 Ill. 239, 523, 34 Am. Rep. 191; Black v. Transportation Co., 55 Wis. 322; Amas v. Railroad, 67 Wis. 46, 58 Am. Rep. 848; Meuer v. Railroad, 5 S. Dak. 568; Smith v. Railroad, 29 Barb. 132; Baltimore, etc. R. R. v. Brady, 32 Md. 333. This distinction has also been repudiated as too artificial and vague. See Griswold v. Railroad, 53 Conn. 371, 55 Am. Rep. 115; Philadelphia, etc. R. R. v. Derby, 14 How. (U. S.) 468.

Thus far the authorities while not in harmony are by an overwhelming preponderance in favor of the rule that in case of passengers for hire, a common carrier will not be permitted to limit its liability for its own negligence or that of its servants. But now the further question arises, is a common carries liable to a person carried gratuitously or at reduced rates, and, even if so, will that fact furnish such a consideration as will validate a contract with the passenger exonerating the carrier from responsibility for its own negligence or that of its servants. The great confusion of authority and argument that exists on this subject is due no doubt in large measures to a failure to distinguish between the carrier's liability on contract and tort. The undertaking of a common carrier to transport a passenger from one point to another is more than a contractual relation between individuals,—it is a public relation as well, to which duties and liabilities are attached entirely separate and distinct from any arising under the contract. These duties to the public the carrier and, indeed, the passenger himself, cannot in principle be permitted to abrogate or modify. The government as *parens patriæ*, is interested in the life of the citizen and even the latter himself is not justified in making an attempt to take his life by his own hand; much less should a railroad corporation be permitted to exonerate itself from any responsibility to protect the life of the passenger under its care and, by special contract, to place itself in a position where it is free to maim, injure and kill without fear of liability. Such a contract is absolutely against public policy and should be sternly discountenanced. It is evident therefore that persons riding gratuitously by express or implied invitation of the carrier are as much passengers in every sense of that term as passengers for hire. The consideration for such a contract is in the rule that the confidence induced by undertaking any service for another is a sufficient legal consideration to create a duty in the performance of it. This rule was laid down in the leading case of Coggs v. Bernard, 1 Smith's Leading Cases, 199, and is universally sustained by authority. See Waterbury v. Railroad, 17 Fed. Rep. 671; Annas v. Railroad, 67 Wis. 46, 58 Am. Rep. 848; New World v. King, 16 How. (U. S.) 469. Thus, persons riding free by consent of the company, or with consent of the conductor, or where no demand is made for his fare, or on a free pass, have the same rights as other passengers, and the carrier assumes towards them the same responsibility and is liable for the same lack of care and to the same degree. Benner Undertaking Co. v. Bus

son, 58 Ill. App. 17; Jacobus v. Railroad, 20 Minn. 125, 18 Am. Rep. 360; Pittsburg, etc. R. R. v. Caldwell, 74 Pa. St. 421; Sherman v. Railroad, 72 Mo. 62, 37 Am. Rep. 423; State v. Railroad, 63 Md. 433; Rose v. Railroad, 39 Iowa, 246; Buck v. Power Co., 46 Mo. App. 555; Louisville, etc. R. R. v. Taylor, 126 Ind. 126. This rule and the reason for it is well stated in Waterbury v. Railroad, 17 Fed. Rep. 671, where the court held that the right which a passenger by railway has to be carried safely does not depend on his having made a contract, but the fact of his being there creates a duty on the part of the company to carry him safely. It suffices to enable him to maintain an action for negligence if he was being carried by the railroad company voluntarily, although gratuitously, and as a mere matter of favor to him.

The last question to be considered is whether the fact that a carrier agrees to carry a passenger gratuitously or at reduced rates furnishes such a consideration as will validate an agreement on the part of the latter exonerating the carrier from liability. The rule supported by the weight of authority and based, as we believe, on the true principles which distinguish between the contractual and public relations arising upon the agreement to carry, is to this effect,—that any indorsement or agreement on the back of any part of the contract of carriage which, on consideration of gratuitous or reduced rate of passage, exempts the carrier from liability for negligence is against the policy of the law and void. Grand Trunk R. R. v. Stevens, 95 U. S. 655; Cleveland, etc. R. R. v. Curran, 19 Ohio St. Rep. 1; Rose v. Railroad, 39 Iowa, 246; Brush v. Railroad, 43 Iowa, 554; Jacobus v. Railroad, 26 Minn. 125, 18 Am. Rep. 360; Illinois Central R. R. v. Crudup, 63 Miss. 291; Bryan v. R. R., 32 Mo. App. 228; Camden v. Railroad, 7 Atl. Rep. (Pa. 1887) 731; Mobile. etc. R. R. v. Hopkins, 41 Ala. 486, 2 Am. St. Rep. 369. On the other hand, it was held in New York that public policy was satisfied by holding a railroad company bound to take the risk when the passenger chooses to pay the regular fare. If he voluntarily and for any valuable consideration waives the right to indemnity, the contract is binding. Bissell v. Railroad, 25 N. Y. 442, 8 Am. Dec. 369. This rule applies particularly to persons traveling on passes, and is upheld by the following authorities: Quimby v. Railroad, 150 Mass. 365, 23 N. E. Rep. 205, 5 L. R. A. 846; Griswold v. Railroad, 53 Conn. 371, 55 Am. Rep. 115; Chicago, etc. R. R. v. Hawk, 36 Ill. App. 321; Rogers v. Steamboat Co., 86 Me. 261, 29 Atl. Rep. 1069, 25 L. R. A. 491; Muldoon v. Railroad, 10 Wash. 311, 45 Am. St. Rep. 787; Annas v. Railroad, 67 Wis. 46, 30 N. W. Rep. 282. Thus, in the case of Rose v. Railroad, 39 Iowa, 246, a railroad was held liable for causing the death of a passenger by the negligence of its employees, although he was riding on a pass releasing the company from all liability for injury to his person and property. In the case of Bissell v. Railroad, 25 N. Y. 442, it was held that a common carrier, in consideration of an abatement in whole or in part of his legal fare, may lawfully contract with a passenger that the latter will take upon himself the risk of damage from the negligence of agents and servants, for which the carrier would otherwise be liable. In Bates v. Railroad, 147 Mass. 255, it was held that the privileges accorded by a railroad to an express messenger of riding in the baggage car where passengers are not allowed, is a sufficient consideration for an agreement to absolve the railroad from all liability for resulting injury. In the case of Illinois Central R. R. v. Crudup, 63 Miss. 291, it was held that a railroad company was not relieved from liability for the negligence of its servants by the fact that the injured person, a mail agent running on its road, had accepted a free ticket, by which he assumed the risk of injury.

In conclusion, it may be stated that the weight of authority, sound principle and a safe public policy sustain the following propositions,—that a common carrier may limit its liability by special contract for injuries not arising from its own negligence or that of its servants, but that in regard to the latter a contract exempting itself from liability is void as against public policy; that in the case of gratuitous passage the liability of the carrier for its own negligence or that of its servants is not modified or limited to any extent whatever, the liability of the carrier in this regard not arising out of the contract of passage, but out of the relation created by accepting the person as a passenger; and for the same reason any limitation of its liability in cases of gratuitous passage is no more warranted than in cases of passengers for hire, and is as much opposed to a safe public policy in the one case as the other; that any distinction between ordinary and gross negligence in permitting a carrier to limit its liability as to one and not the other is vague and artificial, as all negligence which injures the person and endangers human life may be said to be gross. The fraud and willful misconduct of the carrier or its agents are by all authorities held to subject the carrier to a liability from which it can by no contract claim exemption or exoneration.

A. H. ROBBINS.

JETSAM AND FLOTSAM.

SPECIALISM IN THE LAW.

James B. Dill, the corporation lawyer, writes interestingly in *Success* on the question, "Are the Three Great Professions Declining?" taking the law as his subject. He says: "The great bulk of the work of the profession has been turned into industrial creation and adjustment, and very often the counsel is as good a business man as his clients. A knowledge of law has, therefore, within the last thirty years, become the side arms of certain classes of the captains of industry. Every good business man knows a good deal of law. Specialism has split it up into a half dozen or more divisions, and a lawyer who is now able to master more than one sort of practice is a genius. The profession has lost nearly all of its old, æsthetic, ostentatious attractions. The civil law pays a practitioner so much more than the criminal law does, that it attracts the ablest men. Juries and courts no longer care for eloquence. Yes, law is business, and if the young man wants to practice it, the sooner he makes up his mind to do so with an eye single to some particular branch of it, the better lawyer will he become."

BOOKS RECEIVED.

Tabular Analysis of the Law of Real Property. Arranged by L. W. McCandless. (Following Blackstone Book II.) Ann Arbor, Mich. Published by George Wahr, 1901. Cloth, price $1.50. Review will follow.

Hirsch's Tabulated Digest of the Divorce Laws of the United States. (New Revised Edition.) By Hugo Hirsch. Folding Chart, Cloth Covers. Price, $1.50. Funk & Wagnalls Company, New York and London. Review will follow.

WEEKLY DIGEST.

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Important Decisions and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

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1. AGENCY—Authority—Estoppel.—Defendant is not estopped to deny that its solicitor, who had an office with it, where he also, to plaintiff's knowledge, attended to law business other than defendant's had authority to make contracts, or receive money for it, though in communicating with her he used its letter heads, and sent his receipts and forged instruments, drawn on forms in use by it, and in one case sent her a mortgage, money for the purchase of which from defendant she had sent him.—HARVEY v. SCHUYLKILL TRUST CO., Pa., 49 Atl. Rep. 277.

2. AGENCY—Authority—Payment of Mortgage.—Where a mortgagee permits his agent, who has invested his money for him, to retain the bond and mortgage in his possession, and collect interest thereon, he gives such agent apparent authority to receive payment of the mortgage after maturity, and is estopped from denying that he possessed such authority.—CENTRAL TRUST CO. OF NEW YORK v. FOLSOM, N. Y., 60 N. E. Rep. 599.

3. ASSIGNMENT FOR CREDITORS—Rights of Mortgagee—Rents of Realty.—Rents of land, accruing after an assignee for the benefit of creditors has taken possession of the assigned property, belong, as between general creditors and a mortgagee claiming under a mortgage which pledges the rents, issues, and profits of the land to the latter, when necessary to fully pay the obligation secured by the mortgage.—HUTCHINSON v. STRAUB, Ohio, 60 N. E. Rep. 602.

4. ATTACHMENT—Non-Resident—Judgment in Personam.—An action to enforce the collection of a debt by attachment of the property of a non-resident of this state, who has not been summoned nor entered his appearance, is essentially a proceeding *in rem*, and the judgment rendered therein can have no effect beyond the appropriation of the attached property to the satisfaction of the debt and costs.—OIL WELL SUPPLY CO. v. KOEN, Ohio, 60 N. E. Rep. 603.

5. ATTORNEY AND CLIENT—Summary Proceedings—Payment of Money—Stipulation.—Where, in a summary proceeding to compel payment of money alleged to have been collected by an attorney, a stipulation is entered into for the amendment of the order of reference, so that differences between the parties as to moneys in the attorney's hands as business agent might be included, the stipulation authorizing the court to enter a decree on confirmation of the report of the referee, ordering the attorney to pay over any amount found due, binds such attorney in his character as business agent only to the extent of the determination of the amount due, the court having no power, even by consent, to compel by order, instead of judgment and execution, the payment of money in his hands as agent.—IN RE LANGSLOW, N. Y., 60 N. E. Rep. 590.

6. BENEFICIAL ASSOCIATION—Insolvency—Receivers.—The beneficiary of a beneficial association is, on the death of a member, a creditor of the association, so as to have the right to attachment.—FROWERT v. BLANK, Pa., 49 Atl. Rep. 302.

7. BILL OF LADING—Ownership of Goods—Hypothecation of Bill.—Evidence in this case considered, and held, that where a bill of lading was issued, but retained by the shipper, who hypothecated the same to a third party, after the shipment had been made, the evidence reasonably tends to support the finding of the trial court that it was the intention of the shipper to vest the title of the property in the consignee at the time the same was delivered to the carrier.—BANK OF LITCHFIELD v. ELLIOTT, Minn., 86 N. W. Rep. 453.

8. BONDS—Official Actions for the Use and Benefit of Third Persons.—Where the bond of a city marshal runs to the city, and not to the people, an action cannot be maintained for the use and benefit of a third person unless it is expressly authorized by statute.—CITY OF EATON RAPIDS v. STUMP, Mich., 86 N. W. Rep. 438.

9. CARRIERS—Duty to Drunken Trespasser on Freight Train.—Where the servants in charge of a freight train ejected a trespasser in a drunken and helpless condition in a deep cut on a dark night, and he was run over and killed by a train which followed, as the servants ejecting him had reason to believe that he would be, the railroad company was liable for his death, though the place at which he was ejected was the place at which he entered the train.—FAGG'S ADMR. v. LOUISVILLE & N. R. CO., Ky., 63 S. W. Rep. 580.

10. CARRIERS—Stop-Over Privilege.—Where plaintiff sued for an illegal arrest for the alleged non-payment of railroad fare, and there was evidence that plaintiff stopped over without securing a stop-over check, the rules of the company requiring conductors to issue stop-over checks was admissible.—DIXON v. NEW ENGLAND R. R., Mass., 60 N. E. Rep. 581.

11. CONSTITUTIONAL LAW—Validity of Act Establishing City Court.—Since Code, tit. 3, ch. 6, authorizing the establishment of city courts, and conferring on them concurrent jurisdiction with the district and circuit courts, operates uniformly on all persons within the relations and circumstances provided for, it does not violate Const. art. 1, § 6, requiring all laws of a general nature to be of uniform operation.—PAGE v. MILLERTON, Iowa, 86 N. W. Rep. 441.

12. CORPORATIONS—Ratification of Expenditure by President.—Where the president of a turnpike road company expended money of the corporation in erecting on his premises a tollhouse, which was used by the company for many years, the company keeping the house in repair, paying taxes thereon, and exercising acts of ownership over the premises, there was a ratification by the company of the expenditure

made by the president, whether it was originally authorized or not.—HERRING v. DIX RIVER & L. TURNPIKE ROAD CO., Ky., 63 S. W. Rep. 576.

13. CRIMINAL LAW—Adultery — Information.—An information for adultery, which charged that a man and woman unlawfully cohabited, said woman "being lawfully married to another person," sufficiently alleged that the woman was married to some one other than her co-defendant.—LENERT v. STATE, Tex., 63 S. W. Rep. 563.

14. CRIMINAL LAW — Perjury — Testimony — Materiality.—Where the issue in a prosecution for gaming was whether the house had a roof, without which it would not be an outhouse, as alleged in the indictment, and defendant testified that its roof was about two-thirds gone, for which testimony he was prosecuted for perjury, there was no error in charging that the fact as to which he testified was material.—JERNIGAN v. STATE, Tex., 63 S. W. Rep. 560.

15. CRIMINAL LAW—Violation of Ordinance—Punishment.—The punishment prescribed by the ordinance in question was that, upon conviction of the offense therein provided for, the accused "be punished by a fine not exceeding $100, nor less than $10, or by imprisonment in the workhouse of the city of Minneapolis for a term not exceeding ninety days, not less than ten days." Held, that the municipal court was authorized to fine or imprison, in its discretion, under and within the limits of this provision.—STATE v. GRIMES, Minn., 86 N. W. Rep. 449.

16. CRIMINAL LAW — White-Capping — Threatening Letter.—Where an indictment for white-capping charged that defendant, on April 9, 1900, sent to complainant a letter containing a drawing of a coffin, a body suspended by the neck, and the words, "Jim Owens went to Hell June 20th, 1900," the intention to convey the idea that complainant would be hung June 20th was sufficiently plain so that it was not necessary for the indictment to contain an *innuendo* averment.—DUNN v. STATE, Tex., 63 S. W. Rep. 571.

17. DEATH BY WRONGFUL ACT — Damages—Negligence.—The damages recoverable for death by a wrongful act are limited by statute to the amount of "pecuniary injuries" sustained by the persons for whose benefit the action is brought. They must be estimated according to reasonable probabilities,—as well those which tend to make the pecuniary injury less as those which tend to increase it.—CONLEY v. MAINE CENT. R. CO., Me., 49 Atl. Rep. 668.

18. DEEDS — Defeasible Fee—"Dying Without Children."—Where a father conveyed land to his daughter, providing in the deed that, in case of her death "without children" before he should die, the land should revert to him, and that if she died after his death "without issue" the title should vest in his grandson, the fee did not become absolute upon the birth of a child to the daughter, but was still subject to be defeated by her death at any time without leaving children.—CALMES v. JONES, Ky., 63 S. W. Rep. 583.

19. DEED—Unopened Street as Boundary — Adverse Possession.—The grantee in a deed describing the property as bounded by the line of a street, which at the time is platted, but unopened, takes an easement only over the bed of the unopened street, and enters into possession by privity with the original owner, and in subservience to his title, so that adverse possession cannot commence till the privity is broken by some unequivocal act.—COLE v. CITY OF PHILADELPHIA, Pa., 49 Atl. Rep. 308.

20. EMINENT DOMAIN—Assessment of Damages—Review.—Under chapter 88, Gen. Laws 1897, the report of the appraisers appointed by the district court to assess damages caused by the erection of a dam at the outlet of Lake Minnetonka, when confirmed by the district court, must be regarded as final, unless it be apparent that some erroneous principle of law had been pursued in the reception of evidence or by the award of the board of appraisers to the injury of the petitioners.—IN RE MINNETONKA DAM, Minn., 86 N. W. Rep. 455.

21. EVIDENCE—Boundaries—Parol — Declarations of Grantor.—Where a deed to real estate is delivered elsewhere than on the land, evidence of the grantee that he was taken on the land by the grantor a few days later, and the boundaries pointed out by the latter, is incompetent to prove a disputed boundary, in a suit between the grantee and a third person, unless the grantor is dead.—O'CONNELL v. COX, Mass., 60 N. E. Rep. 580.

22. EXECUTION—Sale—Notice of Secret Trust.—One purchasing at execution sale against B under judgment which was a lien on the land prior to B.'s deed to K takes the land discharged of any secret trust, K having given notice at the sale merely that he was the absolute owner of the land, and that B. had no interest therein.—DEWATERS v. KUHNLE, Pa., 49 Atl. Rep. 264.

23. EXECUTORS AND ADMINISTRATORS—Claim Against Estate—Contract for Board.—Where a father agrees to pay his son so much a week for board, the fact that the father afterwards changed his mind, and decided to leave certain property to the son, does not authorize the latter to recover from the father's estate the reasonable value of the board, but the recovery is limited to the agreed price.—LAIRD v. LAIRD, Mich., 86 N. W. Rep. 436.

24. EXECUTORS AND ADMINISTRATORS—Right of Administrator to Sell Real Estate.—Upon appeal from a judgment for the sale of land to pay the debts of a deceased person, it will be presumed, in the absence of the evidence, that it showed the want of personal property, and that it was necessary to sell the real estate.—SEIBERT v. BLOOMFIELD, Ky., 63 S. W. Rep. 584.

25. FORBEARANCE—Consideration.—Where plaintiffs were about to institute suit to subject the property of M their co-obligor in a note, who had removed from the state, to the payment of his one-sixth part of the debt, and defendant induced them to forego that purpose by executing a bond binding himself "as surety" for M "for one-sixth of said note, and no more," there was a sufficient consideration for the bond, as forbearance to enforce legal rights is a good and valuable consideration.—HOWARD v. LAWRENCE, Ky., 63 S. W. Rep. 589.

26. FOREIGN CORPORATIONS—Internal Management—Jurisdiction.—The court will not take jurisdiction of matters relating to the internal management of a foreign corporation on a dispute between it and one or more of its stockholders.—MADDEN v. PENN ELECTRIC LIGHT CO., Pa., 49 Atl. Rep. 296.

27. FRAUDULENT CONVEYANCES — Sale of Stock—Statute—Fraud.—A failure to comply with Acts 1900, ch. 579, providing that the sale of all or any portion of a stock of merchandise in other than the regular course of business will be presumed to be fraudulent unless the seller and purchaser makes an inventory of the goods before the sale, and unless the purchaser makes inquiry as to creditors of the seller, and gives them notice of the contemplated sale, is not conclusive evidence of fraud, but only creates a presumption thereof, which the purchaser must rebut.—HART v. DEAN, Md., 49 Atl. Rep. 661.

28. GARNISHMENT—Written Disclosures—Oral Examination.—Where the written disclosures of a garnished insurance company denied liability on a policy held by the principal defendant, but on these being stricken from the files, and garnishee's agent subjected to oral examination, it appeared that the company admitted partial liability on the policy, the disclosures were sufficient to make garnishee liable to plaintiff for paying the principal defendant in full.—GRENNELL v. NIAGARA FIRE INS. CO., Mich., 86 N. W. Rep. 435.

29. HIGHWAYS—Liability of Counsel—Authority of Commissioners.—A county not being required to open another highway while it is erecting a new bridge on the site of an old one, it is not liable for injuries re-

ceived from defects in a temporary way opened by commissioners around a bridge which they are rebuilding.—BREWER v. SULLIVAN CO., Pa., 49 Atl. Rep. 259.

30. HUSBAND AND WIFE — Abandonment—Duty of Wife to Accept—Husband's Residence.—If the husband procures a residence suitable to his situation in life, and in good faith will take the wife there and treat her as a husband ought to, the allowance of alimony for maintenance made should cease, as it is the duty of the wife to accept such residence as the husband may, without unwarranted parsimony select.—CLUBB v. CLUBB, Ky., 63 S. W. Rep. 587.

31. INSURANCE — Reformation of Policy—Election of Remedy.—The reversal of a judgment in favor of plaintiff upon a policy of fire insurance on the ground that the policy as written did not embrace the property destroyed, leaves the case as if there had been no judgment, and plaintiff may then amend his petition, and seek a reformation of the policy on the ground of mistake, so as to make it include the destroyed property, as the mere assertion of a claim on the policy as written on the ground that it already embraced the property was not a conclusive election of remedy so as to preclude plaintiff from seeking relief on the ground of mistake.—HILLERICH v. FRANKLIN INS. CO. OF PENNSYLVANIA, Ky., 63 S. W. Rep. 592.

32. INSURANCE COMPANIES—Deposits with Insurance Superintendent — Insolvency.—Where securities have been deposited with the superintendent of insurance by an insurance company, to be held by such superintendent in trust for the benefit and protection of, and as security for, the policy holders of such company, the assignee of such company, under our insolvent laws, cannot recover such securities from such superintendent without first showing that such company is no longer liable to any of its policy holders.—STATE v. MATTHEWS, Ohio, 60 N. E. Rep. 605.

33. JUDGMENT—Res Judicata.—A judgment enforcing a mortgage lien is a bar to an action by the mortgagor against attorneys who procured the execution of the mortgage on the ground of misrepresentations made by them whereby she was induced to execute the mortgage, as the fact that such misrepresentations were made would have been a complete defense to the action to enforce the mortgage.—SHAW v. MILBY'S EXR., Ky., 63 S. W. Rep. 578.

34. LIBEL AND SLANDER — Information — Evidence.—Where defendant was charged with having published a libelous pamphlet, evidence that certain witnesses had seen the pamphlet was not inadmissible because the pamphlet they had seen was not the identical copy the publication of which was charged in the information.—LOCKARD v. STATE, Tex., 63 S. W. Rep. 566.

35. LIFE INSURANCE — Beneficiary.—Where application for life insurance names a beneficiary, the insurer has no power to pay the insurance to another, under its agreement in the policy to pay to the person or persons designated in a condition thereof, providing, "The production by the company of this policy, and of a receipt for the sum assured, signed by any person furnishing proof satisfactory to the company that he or she is the beneficiary, or an executor or administrator, husband or wife, or relative, or connection by marriage, of the assured, shall be conclusive evidence that such sum has been paid to, and received by, the person or persons lawfully entitled to the same."—MCNALLY v. METROPOLITAN LIFE INS. CO., Pa., 49 Atl. Rep. 299.

36. MASTER AND SERVANT — Assault by Employee—Employer's Liability.—Testimony that, as an intending passenger was in the act of entering a car, the conductor caught hold of him, saying, "Stay off till the people get out," is evidence that what the conductor did was not only in the course of his employment, but in the supposed performance of his duty in the orderly management of the passengers leaving and entering the train, so as to make his employer liable for any unnecessary violence used by him in so doing.—MCFARLAN v. PENNSYLVANIA R. CO., Pa., 49 Atl. Rep. 270.

37. MECHANICS' LIENS—Written Contract—Specifying Time.—Under Mechanics' Lien Law 1895, § 6, providing that no lien shall be had for work done or materials furnished where the time stipulated for the completion of the work or furnishing the materials is beyond three years from the date of the contract, where a written contract for furnishing materials fixes no time for their delivery or for payment the party furnishing them can have no lien therefor, though they are furnished within a year from the date of the contract.—KELLEY v. NORTHERN TRUST CO., Ill., 60 N. E. Rep. 595.

38. MUNICIPAL CORPORATIONS — Annexed Territory—Taxation—Liability.—Acts Assem. 1888, ch. 98, § 19 (Annexation Act), provided that until the year 1900 the rate of taxation on all landed property or certain territory annexed to Baltimore should not exceed the rate for Baltimore county; that from and after 1900 the property, real and personal, in said territory, should be liable to taxation as similar property within the other wards of the city; provided, that after the year 1900 the Baltimore county rate of taxation for the year 1887 should not be increased, for city purposes, "on any landed property within the said territory until avenues, streets or alleys shall have been opened and constructed through the same." Held, that property fronting on a turnpike road within said annexed territory, and between two streets, and on which stood some 24 houses, was no longer rural "landed" property, within the proviso, but city property, and taxable as such.—GOEBEL v. MAYOR, ETC. OF BALTIMORE, Md., 49 Atl. Rep. 649.

39. MUNICIPAL CORPORATIONS—Defective Sidewalk—Notice.—A city is not liable for injury from a defective sidewalk, it not having had actual notice of the defect, and there being no evidence from which constructive notice could be inferred, the sidewalk having been repaired 18 days before the accident, and there being no evidence as to when it again got out of repair.—ROGERS v. CITY OF WILLIAMSPORT, Pa., 49 Atl. Rep. 293.

40. NEGLIGENCE — Accidental Occurrence.—Actionable negligence may spring from the careless performance of a legal duty, or from a total neglect and disregard of such duty, but it can never be consistently predicated of a purely accidental occurrence.—FIDELITY & CASUALTY CO. v. CUTTS, Me., 49 Atl. Rep. 673.

41. NEW TRIAL—Excessive Damages—Defamation of Character.—Held, in the case at bar, which was an action for defamation of character, that there is nothing in the evidence which shows, upon comparison of the same with the verdict, that the amount thereof ($50) was at all excessive, or that it was arrived at through passion or prejudice on the part of the jury; and held, further, for this reason, that the court below was not justified in reducing the verdict to the sum of $100.—BLUME v. SCHEER, Minn., 86 N. W. Rep. 446.

42. NUISANCE — Powder Magazine.—A powder magazine located near the shaft of a colliery, and originally not in a residence locality, but around which the population had settled, and of which complaint had not been made during its 30 years of existence, and in which explosives were kept only for use in the mine, and in small quantities, is not a nuisance, so as to render its owners liable for an injury to one living near by explosion caused by lightning.—TUCKASHINSKY v. LEHIGH & W. COAL CO., Pa., 49 Atl. Rep. 308.

43. OFFICERS — Sergeant of Police — Salary.—The salary annexed to a public office is incident to the title to the office, and not to its occupation and exercise, nor to the usurpation or colorable possession of it. On the conditions shown here, there is no merit in the claim that the plaintiff cannot recover because there was a *de facto* officer to whom the salary was paid during the period of time—about three months—between

the day of his attempted dismissal and the day of his reinstatement.—LARSON v. CITY OF ST. PAUL, Minn., 86 N. W. Rep. 459.

44. ORDINANCE—Violation—Complaint—Open Drunkenness.—By Gen. St. 1894, § 1224, village councils are authorized "to order and establish all such ordinances and by-laws for the government and good order of the village, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of trade and commerce and the promotion of health, not inconsistent with the constitution and laws of the United States or of this state, as they shall deem expedient." Held that, under this general welcome clause, councils are authorized and empowered to enact ordinances to punish open and notorious drunkenness.—VILLAGE OF FAIRMONT v. MEYER, Minn., 86 N. W. Rep. 457.

45. PARTNERSHIP — Action of Settlement.—Though the pleadings in an action for a settlement of several different partnerships were defective, yet, as the parties united in praying a reference to the commissioner to settle the accounts of the partnerships, the court will disregard the defects in the pleadings on both sides, and treat the case as an agreed case for a settlement.—MCCOMBS v. MATNEY, Ky , 63 S. W. Rep. 578.

46. PLEADING AND PRACTICE—Mortgage—Foreclosure—Validity.—Where the answer of one defendant in a mortgage foreclosure suit, alleging ownership of the mortgage, and asking its foreclosure, is defective, in failing to allege the execution of the mortgage, such defect is cured by allegations of its execution in the complaint.—HANSEN v. WAGNER, Cal., 65 Pac. Rep. 142.

47. RAILROADS—Engineer—Death—Contributory Negligence.—An engineer and conductor both received orders to take a side track, where there was no telegraph station, and wait until three sections of a train had passed. The conductor and brakeman went to sleep, and in about an hour and a half the conductor, on awakening, saw the second section pass, which he mistook for the third, and sent the brakeman forward with orders to the engineer to pull out. The brakeman found the fireman asleep, and the engineer looked as if he had just awakened. The train was pulled onto the main track and collided with section 3, resulting in the engineer's death. Held, that the engineer was guilty of contributory negligence as a matter of law.—GALVESTON, H. & S. A. RY. CO. v. BROWN, Tex., 65 Pac. Rep. 305.

48. RAILROADS—Fire Set by Locomotive.—In an action against a railroad company for negligently scattering fire by which property adjoining its tracks was destroyed, it is necessary to go further than to show a mere possibility or conjecture that such fire was scattered by one of its engines, to require the submission of that issue to a jury under section 2700, Gen. St. 1894.—MINNEAPOLIS SASH & DOOR CO. v. GREAT NORTHERN RY. CO., Minn., 86 N.W. Rep. 451.

49. RAILROADS—Foreclosure Proceedings—Preferential Debts.—To entitle a general unsecured creditor of an insolvent railroad company, whose property has been placed in the hands of a receiver in foreclosure proceedings, to preferential payment over the mortgage creditors, it must be shown: First, that the demand is not a debt created upon the personal credit of the company, but a current operating expense incurred to maintain its property as a going concern and its railroad in condition to be used with reasonable safety for the transportation of persons and property, and with the expectation of the parties that it was to be met out of the current receipts of the company; and, second, that there are net or current earnings in the hands of the receiver applicable to the payment of such debts of the income, or that there has been a diversion of the current earnings, either before or since the receivership, which the mortgagees should equitably restore.—RHODE ISLAND LOCOMOTIVE WORKS v. CONTINENTAL TRUST CO., U. S. C. C. of App. Sixth Circuit, 108 Fed. Rep. 5.

50. RAILROADS—Negligence — Evidence—Admissibility.—Where the receiver of a street railroad defends an action for the negligent killing of an alleged passenger on the ground that she was not a passenger on the car, and did not receive any injuries through defendant's negligence, the clothing worn by deceased at the time of the accident is admissible for the purpose of her identification, and as tending to show the nature and extent of her injuries.—BAGGS v. MARTIN, U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 33.

51. RAILROADS—Negligence—Speed. — Where, in an action for an accident at a public crossing, negligence of defendant is charged in operating its train at a great and unlawful rate of speed, the court, if requested, should charge that, in the absence of a statute or ordinance prescribing the rate of speed at which the train may run, it is a question of fact for the jury to determine whether or not, under any circumstances, the speed of the train was negligence.—MISSOURI, K. & T. RY. CO. v. MELUGIN, Tex., 63 S. W. Rep. 338.

52. RES ADJUDICATA—Record—Former Action—Pleading.—Where plaintiff sued defendant for the loss of a horse, and alleged that its death was occasioned by the defective condition of defendant's fence, and judgment was rendered in favor of defendant at the close of plaintiff's testimony on the ground that plaintiff had knowledge of the condition of the fence, the judgment was on the merits, and constituted a bar to a subsequent action.—BARTELDT v. SEEHORN, Wash., 65 Pac. Rep. 185.

53. RIGHT OF WAY—Prescription—Statute of Limitations—Computation—Civil War.—Const. 1870, providing that the time elapsing between May 6, 1861, and January 1, 1867, shall not be computed in any case affected by the statute of limitations, has no application to a claim of a right of way by 20 years' user under claim of right, as the reason of such provision was that the courts were closed during such period so that a right could not have been asserted therein, and the right to stop the running of the prescription on the right of way might have been asserted independently of any action in the courts, by merely objecting to, or obstructing the way.—JACKSON v. CODY, Tenn. 63 S. W. Rep. 302.

54. PAYMENT NOT IN MONEY—Sales.—Where the payment for goods sold under a special contract is in something other than money, the seller, who has performed his contract, cannot sue on the common counts, but must declare on the contract.—PUSEY & JONES CO. v. DODGE, Del., 49 Atl. Rep. 248.

55. SCHOOL BOARD—Contract—School Building—Authority.—An action could not be maintained against a school board for failure to permit plaintiff to fulfill a contract to furnish materials for a school house without showing that the board was authorized by the city to construct the building, or to use any of the funds received or receivable from the city for that purpose, or to appropriate any state funds to that end.—PECK SMEAD CO. v. CITY OF SHERMAN, Tex., 63 S. W. Rep. 340.

56. SHERIFFS—Agreement with Deputy.—Under an agreement between a sheriff and deputy for certain years, by which the territory of the country was divided between them, each party to account for the taxes in his part and to be entitled to the fees earned in that part, the deputy is chargeable with uncollected taxes in his territory, as he should, if they were not collectible, have presented them to the county court for exoneration or as delinquent, and received credit therefor.—BALE v. MUDD, Ky., 63 S. W. Rep. 451.

57. SHIPPING—Cargo Damage—Seaworthiness.—The chain locker of a steamship, which extended from the bottom to the main deck, was not water-tight, and during a voyage across the North Atlantic in winter sea water entered through the chain pipes, and damaged sugar which was stowed next the locker, without dunnage properly laid to protect it against leakage. The ends of the pipes on the forecastle deck had

been stopped or covered at the beginning of the voyage, but not sufficiently to withstand the action of the seas which broke over such deck, although the weather was no worse than should reasonably have been anticipated at that season of the year. Held, that the ship was liable for the injury to the cargo.—THE PALMAS, U. S. C. C of App., First Circuit, 108 Fed. Rep. 87.

58. TAXATION—Assessments — Board of Equalization —Limited Jurisdiction.—The board of equalization acting on assessments is a tribunal of limited and inferior powers, and hence its jurisdiction must affirmatively appear on the record of its proceedings.—COPPER QUEEN CONSOL. MIN. CO. v. BOARD OF EQUALIZATION OF COCHISE CO., Ariz., 65 Pac. Rep. 149.

59. TAXATION—Assessment to Decedent—Tax Sale.—Harriet J. Morrill, of Boston, the owner in her lifetime of the real estate in question, died in 1889. The real estate had been assessed to her up to the time of her death. Afterwards, in 1890 and 1891, the assessors continued to assess taxes on this real estate to Harriett J. Morrill as a non-resident owner. For non-payment of these taxes the property was sold at tax sale. The defendant is the grantee of the purchaser at the tax sale. The complainant is the devisee of Harriett J. Morrill.—MORRILL v. LOVETT, Me., 49 Atl. Rep. 666.

60. TAXATION—Mortgage.—When a mortgage was assigned by the owner thereof to another, who held certain notes of the assignor, as collateral security for the payment of the notes, the mortgage was taxable as the personal property of the assignor, so long as the note remains unpaid, and the mortgage continued to be held as security for their payment.—STATE v. HOWELL TP., N. J., 49 Atl. Rep. 675.

61. TAXATION—Validity of Levy — Irregular Meeting of Board of Trustees.—A levy made by the board of trustees of a town of the sixth class, at a special session called by the clerk of the board at the place of business of one its members, which was not the usual meeting place, was void.—TOWN OF SPRINGFIELD v. PEOPLE'S DEPOSIT BANK, Ky., 68 S. W. Rep. 271.

62. TELEPHONE COMPANIES—Construction of Line Along Turnpike.—A telephone company incorporated under the general corporation act of April 29, 1874, and its supplements, is a telegraph company and a turnpike is a highway, within section 33 thereof, providing that a telegraph company incorporated thereunder may construct its line along any highway.—PEOPLE'S TELEPHONE & TELEGRAPH CO. v. PRESIDENT, ETC. OF BERKS & D. TURNPIKE ROAD, Pa., 49 Atl. Rep. 284.

63. TENANTS IN COMMON—Severence of Mineral and Surface Rights.—The owner of mineral rights, under a reservation in a deed of the surface of the lands, is not a tenant in common or joint owner with the owner of the surface, so that either can buy the estate of the other at tax sale.—HUTCHISON v. KLINE, Pa., 49 Atl. Rep. 312.

64. TRESPASS — Inclosure of Another — Possession—Title.—Where defendant purchased land while he knew it was in the actual possession of another, who had purchased and inclosed it, defendant's claim of title did not justify him in turning his cattle into such inclosure without the consent of the one so in possession; and a fine for violating the provision of Pen. Code, art. 794, prohibiting any person from knowingly causing any cattle to go within the inclosure of another without the consent of the owner, should be sustained.—BARBER v. STATE, Tex., 63 S. W. Rep. 323.

65. VENDOR and PURCHASER—Contract by Correspondence.—A sufficient contract for sale and purchase of land may be deduced from correspondence, though it does not contain an express acceptance of terms by the purchaser, and agreement to pay; the seller several times averring a contract, and the purchaser never denying it, but many times tacitly and several times admitting it, and merely asserting as cause of postponement of performance the lack of ready funds.—HAINES v. DEARBORN, Pa., 49 Atl. Rep. 319.

66. VENDOR AND PURCHASER — Contract of Sale—Implied Warranty.—Where a vendee, on entering into a written contract for the sale of real estate, knows that there is a squatter in possession of a portion of the property, and the written contract does not refer thereto, or to the character of the vendor's title, there is no implied contract to furnish a good and marketable title as against such squatter.—LEONARD v. WOODRUFF, Utah, 65 Pac. Rep. 199.

67. WATERS AND WATER COURSES—Navigable Waters —Negligent Operation of Drawbridge.—The owner of a drawbridge across a navigable channel in the Duluth-Superior harbor held liable in damages for injury to a barge in tow, on the ground that the bridge tender negligently failed to give the signal to warn the approaching tug and tow of an obstruction which prevented the opening of the draw until it was too late for the barge to stop, in consequence of which she came in collision with the draw.—HARTLEY v. AMERICAN STEEL-BARGE CO., U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 97.

68. WATERS AND WATER COURSES—Navigable Waters —Obstruction of Channel by Fallen Drawbridge.—Where the owner of a bridge over a navigable channel negligently permitted the draw of the bridge to improperly obstruct the channel, the owner of sea-going vessels which, before the creation of the obstruction, had sailed with cargoes for points of discharge in the channel above the bridge, and of vessels which were above the bridge when the obstruction was created, may, if the vessels were prevented by the obstruction from passing up and down the channel when necessary to do so, maintain suits in admiralty to recover damages in the way of demurrage, regardless of the local law.—NEW YORK, ETC. R. CO. v. PISCATAQUA NAV. CO., U. S. C. C. of App , First Circuit, 108 Fed. Rep. 92.

69. WILLS—Beneficiaries—Adopted Child.—Under a will giving a fund in trust to pay the income to testator's son for life, and on his death the principal to such persons as would be entitled thereto if he survived his wife and died inestate seised and possessed thereof, and in such shares as such persons would in such case be entitled to by law, the rights of a child adopted by the son long after testator's death are to be determined according to the law at the time of the son's death.—IN RE KOHLER'S ESTATE, Pa., 49 Atl. Rep. 286.

70. WILLS—Devisee Dying Before Testator.—Where testator devised land to his son A subject to his payment of legacies, with a provision that, if A did not desire to take the land and pay the legacies, then C should take it, and pay the legacies, and a certain amount to A, and A died before testator, but leaving issue surviving him, and indicated no desire to have the devise transferred to C, and testator intimated no purpose to change the will, the issue of A takes the land subject to the payment of the bequests.—BLACKWELL v. SCOUTEN, Pa., 49 Atl. Rep. 261.

71. WILLS—Devise to Testatrix's Children—Vested Interest.—Where a fund was devised to a trustee, the income to be paid testatrix's children, they took a vested interest as tenants in common, and not as a class with right of survivorship, and hence the estate of a deceased child was entitled to share in the income accruing after such child's death.—STANWOOD v. STANWOOD, Mass., 60 N. E. Rep. 584.

72. WILLS—Undue Influence.—Undue influence, inducing a woman enthusiastic in church work, and who had no relations nearer than nephews, with whom she had little acquaintance, to leave the bulk of her property to the missionary and educational societies of her church, cannot be inferred from the fact that the ministers of the church had influence with her, and knew in advance of her purpose, no suggestion or encouragement by them being shown.—APPEAL OF COLNELIUS, Pa., 49 Atl. Rep. 281.